

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARQUICE EVANS,)	
Plaintiff,)	
)	C.A. No. 21-263 Erie
)	
v.)	District Judge Susan Paradise Baxter
)	Magistrate Judge Patricia L. Dodge
RICHARD LORAH, et al.,)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Marquice Evans, an inmate incarcerated at the State Correctional Facility at Albion, Pennsylvania, initiated this action on September 22, 2021, by filing a *pro se* civil rights complaint [ECF No. 1-1], accompanied by a motion to proceed *in forma pauperis* (“ifp motion”) [ECF No. 1]. The Court granted Plaintiff’s ifp motion on March 30, 2022 [ECF No. 6] at which time the complaint was docketed.

Plaintiff’s *pro se* complaint asserted various constitutional violations, as well as claims of false arrest, false imprisonment, and malicious prosecution, arising from a criminal complaint that was filed against him on August 19, 2015. These claims were brought against multiple Defendants, including Erie County Police Chief Richard Lorah (“Lorah”), Detective Sean Bogart (“Bogart”), former Magisterial District Judge Tom Robie, former Erie County District Attorneys Jack Daneri and Erin Connelly, and Erie County Court of Common Pleas Judges John Trucilla and Jamie Mead.

This matter was originally referred to United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1),

and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. On April 1, 2022, Judge Lanzillo issued a Report and Recommendation recommending dismissal of all of Plaintiff's claims against all Defendants, except for a claim of malicious prosecution against Defendants Lorah and Bogart [ECF No. 8]. This Court adopted Judge Lanzillo's recommendation by Memorandum Order dated April 29, 2022 [ECF No. 10]. As a result, all claims other than Plaintiff's malicious prosecution claim were dismissed, with prejudice, and all Defendants other than Defendant Lorah and Bogart were terminated from this case.

On June 8, 2022, Defendants Lorah and Bogart filed a motion to dismiss the remaining claim of malicious prosecution [ECF No. 13]. This motion was fully briefed by the parties. After the filing of Defendants' motion to dismiss, Magistrate Judge Lanzillo recused himself from this case [ECF No. 17] and this matter was referred to United States Magistrate Judge Patricia L. Dodge for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On November 7, 2022, Judge Dodge issued a report and recommendation ("R&R") recommending that the motion to dismiss filed by Defendants Lorah and Bogart be granted and that Plaintiff's remaining claim of malicious prosecution be dismissed, without prejudice [ECF No. 29]. In particular, Judge Dodge found that Plaintiff's malicious prosecution claim is not cognizable because the criminal proceedings against him remain pending and have not been terminated in his favor. No timely objections to the R&R have been filed.

After *de novo* review of the relevant documents in this case, together with the report and recommendation, the following order is entered:

AND NOW, this 9th day of December, 2022;

IT IS HEREBY ORDERED that the motion to dismiss filed by Defendants Lorah and Bogart [ECF No. 13] is GRANTED and Plaintiff's remaining claim of malicious prosecution is dismissed, without prejudice to Plaintiff's right to commence a new action restating the same claim against the same Defendants in the event his criminal proceedings are finally resolved in his favor. The report and recommendation of Magistrate Judge Dodge, dated November 7, 2022 [ECF No. 29], is adopted as the opinion of the Court.

The Clerk is directed to mark this case CLOSED.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Patricia L. Dodge
U.S. Magistrate Judge

all parties of record